

DRAFT SECTION 100 CHANGES TO THE RULES OF PRACTICE

RULES OF PRACTICE of the STATE BOARD OF EQUALIZATION

California Code of Regulations Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD

5010. DEFINITIONS; BOARD HEARING PROCEDURES; MANNER OF FILING.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on appeals filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) Two copies of an appeal to the Board from action by the Franchise Tax Board under the Administration of Franchise and Income Tax Laws or the Senior Citizens Property Tax Assistance Law, along with two copies of any supporting documents, shall be addressed and mailed to the Chief, ~~of~~ Board Proceedings ~~Division~~, State Board of Equalization in Sacramento, or deposited personally at the headquarters office of the Board in Sacramento. Upon receipt of the appeal, the ~~Chief, of~~ Board Proceedings Division shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board in Sacramento, California.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19045, 19046, 19072, 19085, 19087, 19324, 19331, 19332, 19343, 19344 and 20645, Revenue and Taxation Code.

5011. TIMELINESS.

An appeal shall be timely if it is mailed to or received ~~at the headquarters by the~~ Board Proceedings Division ~~office of the Board~~ within the time specified by the particular statute under which the appeal is taken. Unless expressly stated otherwise in the statute under which the appeal is taken, such statutory period shall be extended 5 days upon service by mail of the action of the Franchise Tax Board being appealed if the place of address is within California, 10 days if the place of address is outside California but within the United States, and 20 days if the place of address is outside the United States. In the absence of other evidence, the postmark date or the date of delivery to a delivery service as defined in Article 7, Regulation 5070 shall be considered as the mailing date. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19045, 19072, 19084 ~~(b)~~, 19085, 19087, 19324, 19331, 19343 and 20645, Revenue and Taxation Code.

5012. FORM.

(a) The appeal shall be in writing and shall state the fact that an appeal is being made, the name of the taxpayer, the amounts and the years involved, the date when the notice of action was mailed by the Franchise Tax Board, the facts involved and the legal authorities relied on by the taxpayer, including relevant statutes and regulations. Any portion of the tax ~~which that~~ the taxpayer concedes is owing shall be indicated in the appeal. The appeal shall be signed by the taxpayer or by the taxpayer's authorized representative.

(b) If the Franchise Tax Board's notice of action was directed to more than one taxpayer, each taxpayer desiring to contest it shall file an appeal on that taxpayer's own behalf, either separately or jointly with any other taxpayer, and each taxpayer shall satisfy all the requirements of this section in order for the appeal to be treated as filed by that taxpayer.

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Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19045, 19046, 19072, 19084, 19085, 19087, 19324, 19331, 19332, 19343, 19344 and 20645, Revenue and Taxation Code.

ARTICLE 2. BUSINESS TAXES AND TIMBER YIELD TAX

5024. COMBINED CLAIMS FOR REFUND ON BEHALF OF CLASS OF TAXPAYERS. (Sales and Use Tax, including State-administered local sales, transactions, and use taxes.)

(a) This regulation applies only to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class shall establish:

(1) That it is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and the issues of fact ~~which~~that are common to all class members and those ~~which~~that are not, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority shall authorize the Board Staff to release to the representative any confidential information in the Board's files ~~which~~that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) That the representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) That the representative can fairly and adequately protect the interests of each member of the class and that the representative's interests are not antagonistic to members of the class.

(7) When requested by the Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If the Board Staff finds that the claim is a proper combined claim it shall, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If the Board Staff finds that the claim is not a proper combined claim, it shall act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund shall be limited to the amount of tax overpayment by that member under the tax law pursuant to which the claim was filed.

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(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member shall be established and the representative or member shall furnish or make available to the Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to the Board Staff, the representative or member, shall be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law pursuant to which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply with respect to persons who have not previously been notified of the claim, or who have notified the Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply with respect to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority: Section 15606(a), Government Code; and Sections 7051, 7202~~(d), 7202(h)(4)~~, 7203, 7261, 7261, and 7270, Revenue and Taxation Code.

Reference: Sections 6814, 6904 and 6932, Revenue and Taxation Code.

ARTICLE 3. HEARINGS ON JEOPARDY DETERMINATIONS

5031. PETITION FOR REDETERMINATION OR REASSESSMENT AND STAY OF COLLECTION ACTIVITIES.

The person against whom a jeopardy determination or a jeopardy assessment is made may petition for redetermination or reassessment thereof if the person, within 10 days after service of the notice of the jeopardy determination or jeopardy assessment, files a petition for redetermination or reassessment and within that period deposits with the Board such security as the Board deems necessary to secure compliance with the tax law or laws pursuant to which the determination is made or to insure payment of the amount due for the assessment. The petition shall be in writing and shall state the specific grounds upon which it is based. The filing of the petition and depositing of the required security shall stay further collection activities until such time as the determination or assessment becomes final. Board Staff review of such petitions shall be governed by the procedures set forth in Article 2, Regulation 5023.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4)~~, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 11354, 30243, 30243.5, 32312, 32313, 38433, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

5032. APPLICATION FOR ADMINISTRATIVE HEARING.

(a) Within 30 days after service of the notice of jeopardy determination or jeopardy assessment, the taxpayer against whom a jeopardy determination or jeopardy assessment has been made may, with or without complying with the requirements of Regulation 5031, apply for an administrative hearing.

(b) The taxpayer may apply for such a hearing for one or more of the following purposes:

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- (1) to establish that the determination or assessment is excessive;
 - (2) to establish that the sale of property that may have been seized after issuance of the jeopardy determination or jeopardy assessment or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person;
 - (3) to request the release of all or a part of the seized property to the person;
 - (4) to request a stay of collection activities.
- (c) The application shall be in writing and shall state the specific factual and legal grounds upon which it is founded.
- (d) No security need be posted to obtain this hearing. Unless the person complies with the provisions of Regulation 5031 relating to the deposit of security, the filing of the petition shall not operate as a stay of collection activities except sale of the property seized.
- (e) Upon a showing of reasonable cause for failure to file a timely petition for administrative hearing, the Board may allow a late filing of the petition and grant petitioner an administrative hearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, ~~7203~~, ~~7261~~, ~~7262~~, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

5033. EFFECT OF FILING APPLICATION.

With respect to a jeopardy determination or a jeopardy assessment, the seized property shall not be sold without the consent of the owner during the first 30 days after service of the notice of jeopardy determination or jeopardy assessment nor while a timely application for an administrative hearing is pending. The storing of the property during the period the application is pending shall be at the applicant's expense.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, ~~7203~~, ~~7261~~, ~~7262~~, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 30243, 30243.5, 32312, 32313, 38433, 38435, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

5034. ADMINISTRATIVE HEARING.

An administrative hearing shall be scheduled promptly after the filing of the application. The administrative hearing shall be conducted as an appeals conference, following the procedures set forth in Article 2, Regulation 5023. When an oral hearing before the Board is requested, the hearing shall be scheduled as soon as practicable. The Board shall give the applicant at least 10 days' notice of the time and place of the hearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, ~~7203~~, ~~7261~~, ~~7262~~, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

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5035. ADMINISTRATIVE HEARING ORDER.

The Appeals Attorney or Appeals Auditor may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property shall not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, 7201, 7261, 7261, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

5036. NOTICES.

Any notice given pursuant to this article shall be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

ARTICLE 4. STATE ASSESSEES AND PRIVATE RAILROAD CAR COMPANIES

5041. FILING AND CONTENTS OF PETITION.

(a) Board Staff shall send a notice to each assessee setting forth the amount of assessed value and the ~~dates- date~~ by which a petition for reassessment may be filed.

(b) The appropriate Board Staff capitalization rate study and final calculations of the value indicators shall be made available, between the time that the Board values the subject property and the deadline for filing a petition, to any petitioner submitting a written request therefor to the Chief, Valuation Division, State Board of Equalization.

(c) The petition shall be in writing and shall state the name of the petitioner, the petitioner's opinion of value, and the precise elements of the Board's valuation to be contested, and shall include petitioner's appraisal reports, financial studies and other materials relevant to value. Petitioner's appraisal reports, financial studies and other materials relevant to value shall not be presented as evidence at the hearing unless provided to the Chief, of Board Proceedings ~~Division~~ at the time of filing of the petition.

(d) The petition shall also indicate whether an oral hearing is desired and whether written findings and decision are requested. If requested in the petition, the Board shall issue written findings and decision. The petition shall be signed by the petitioner or petitioner's authorized representative and shall be addressed and mailed to the Chief, of Board Proceedings ~~Division~~, State Board of Equalization at Sacramento, or shall be deposited personally at the headquarters office of the Board in Sacramento.

(e) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The

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analysis and recommendation shall be submitted to the Chief, ~~of~~ Board Proceedings ~~Division~~ and a copy shall be sent to the petitioner.

(f) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, ~~of~~ Board Proceedings ~~Division~~.

(g) The Chief, ~~of~~ Board Proceedings ~~Division~~ shall distribute the petition and related documents, the staff analysis and recommendation, and the petitioner's response, if any, to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

(h) A reasonable extension of time for filing materials under (c), (e) or (f) above may be granted by the Chief, ~~of~~ Board Proceedings ~~Division~~ for reasonable cause. The request for an extension of time shall be submitted in writing no later than 5 o'clock p.m. of the last business day before the date set for filing the materials.

(i) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, ~~of~~ Board Proceedings ~~Division~~ to the person submitting the documents.

Note: Authority: Section 15606(a), Government Code; ~~and~~ Section 11651, Revenue and Taxation Code.

Reference: Sections 741, 742, 743, 746, 747, 748, 11338, 11339, 11340 and 11353, Revenue and Taxation Code.

5042. TIMELINESS OF FILINGS .

A petition, staff analysis and recommendation, or response to staff analysis and recommendation shall be timely if it is mailed to or received by the Chief, ~~of~~ Board Proceedings ~~Division~~ at the headquarters office of the Board in Sacramento within the time specified by these rules. In the absence of other evidence, the postmark date or the date of delivery to a delivery service as defined in Article 7, Regulation 5070 shall be considered as the mailing date. If the last day for mailing a petition falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day. If the petition is not timely, it shall be dismissed. If it is incomplete, as through omission of any of the requirements specified in Regulation 5041, it may be dismissed.

Note: Authority: Section 15606(a), Government Code and Section 11651, Revenue and Taxation Code.

Reference: Sections 731, 732, 733, 741, 11338, 11339 and 11353, Revenue and Taxation Code.

5043. ASSESSMENT FACTOR HEARINGS.

The Board may annually conduct hearings to be called "Assessment Factor Hearings" to receive public testimony on issues relating to capitalization rates and other factors affecting values of California state-assessed property and private railroad cars. No later than 30 days prior to the hearing, state assesses and private railroad car taxpayers, or other persons wishing to be listed on the agenda, shall notify the Chief, ~~of~~ Board Proceedings ~~Division~~ if they intend to make oral presentations at the hearing. Testimony of persons who do not notify the Chief, ~~of~~ Board Proceedings ~~Division~~ as set forth above will be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assesses or private railroad car taxpayers may submit written presentations to the Chief, ~~of~~ Board Proceedings ~~Division~~ no later than the date of the hearing.

Note: Authority: Section 15606(a), Government Code; ~~and~~ Section 11651, Revenue and Taxation Code.

Reference: Sections 110, 721, 11251, 11291, 11292, 11293 and 11294, Revenue and Taxation Code.

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ARTICLE 5. TAXABLE PROPERTY OF A COUNTY, CITY, OR MUNICIPAL CORPORATION

5052. TIME AND PLACE OF FILING; COPIES.

(a) If the assessment objected to is one made during the regular period for such assessments, the application shall be filed with the Chief, ~~of~~ Board Proceedings ~~Division~~ of the Board at its headquarters office in Sacramento on or before the third Monday in July of the year in which the assessment is made, or within two weeks after the completion of the local roll containing the assessment, whichever is later. The regular assessment period is from January 1 to and including July 1 or to such later date for completion of the roll as may be authorized by the Executive Director of the Board. If the assessment objected to is one made outside the regular period for such assessments, the application shall be filed within 60 days from the date the tax bill is mailed to the assessee.

(b) A copy of the application, together with any separate statement of legal authorities, including relevant statutes and regulations, shall be filed by the applicant with the assessor whose assessment is questioned and with the governing body of the tax agency. A statement of the fact of filing with the assessor and the taxing agency shall be endorsed upon the application.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

5055. NOTICE OF HEARING.

Notice of hearing shall be sent in accordance with the procedures set forth in Article 7, Regulation 5076(b). The notice shall contain a statement that (subject to the limitations of Sections 3(b) and 11, Article XIII of the Constitution) the Board is required to find the full cash value of the property ~~which~~that is the subject of the hearing and that this finding may exceed the value on which the assessment is based.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 3(b) and 11, Article XIII, California Constitution, ~~Article XIII~~; and Section 1840, Revenue and Taxation Code.

5056. BOARD APPRAISED PROPERTY.

If a property that has been appraised by Board Staff becomes the subject of a proceeding under this Article, both parties to the proceeding shall be informed of the fact that the appraisal has been made. Each party, upon request, shall have access to the appraisal records. Either party or the Board Staff may call the appraiser or the appraiser's supervisor as a witness and may offer the appraisal records as an exhibit. A party desiring to call the appraiser or the appraiser's supervisor as a witness shall, at least ten days prior to the hearing, notify the Chief, ~~of~~ Board Proceedings ~~Division~~, of its intention to call such witness.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

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ARTICLE 6. PROPERTY TAX WELFARE EXEMPTION CLAIM REVIEW PROCEDURE.

5061. SUPPLEMENTARY MATERIAL; APPLICATION FOR ADDITIONAL TIME TO SUBMIT SUPPLEMENTARY MATERIAL.

(a) Where, after analysis of a claim, Board Staff determines that the requirements of Section 214 through Section ~~214.14~~214.15, inclusive, of the Revenue and Taxation Code have not been met for any of the following reasons, indicated on the Board's annual welfare exemption finding sheet to the claimant:

- (1) ~~Fund Raising~~Fund-Raising Purposes (Coded - F.R.P.);
- (2) Religious Aspect Not Apparent (Coded - R.N.A.);
- (3) Not Exclusively Used (Coded - N.E.U.);
- (4) Charitable Aspect Not Apparent (Coded - C.N.A.);
- (5) Vacant, Unused Property (Coded - V.U.P.);

a notice shall accompany the finding sheet information sent to the claimant that the claimant has 30 days from the date of the notice to submit supplementary material supporting the claim.

(b) Upon written application filed within the noticed time limit, the claimant shall be granted an additional 30 days to submit the material.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 214, 214.01, 214.02, 214.05, 214.1, 214.2, 214.3, 214.4, 214.5, 214.6, 214.7, 214.8, 214.9, 214.10, 214.11, 214.13, 214.14, 214.15, 254.5 and 270, Revenue and Taxation Code.

5063. HEARING PETITION: CONTENTS.

(a) The petition for hearing shall be in writing and addressed to the Chief of Board Proceedings ~~Division~~. It shall state all of the grounds upon which qualification is claimed, and shall include all documents the petitioner wishes the Board to consider in deciding the petition. The petition shall indicate whether an oral hearing is desired, and if so, claimant's estimate of the time necessary therefor. If requested in the petition, and in the event that the Board grants a hearing and hears the matter, the Board shall issue written findings and decision. The petition shall be signed by an authorized representative of the claimant and shall be mailed to the Chief of Board Proceedings ~~Division~~ of the State Board of Equalization at Sacramento, California, or shall be deposited personally at the headquarters office of the Board's office at Sacramento. The Chief of Board Proceedings ~~Division~~ may require the representative to demonstrate the representative's authority to represent the claimant.

(b) No later than 30 days after the date that the petition for hearing is received pursuant to subdivision (a), the Board Attorney assigned to the case shall schedule a meeting or telephone conference, at a time suitable for the petitioner and the assessor, for the purpose of establishing the agreed upon and contested facts and the legal issues under consideration.

(c) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief of Board Proceedings ~~Division~~ and a copy shall be sent to the petitioner.

(d) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief of Board Proceedings ~~Division~~.

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(e) The provisions of subdivisions (b) of Regulation 5075 shall apply to materials submitted pursuant to (a), (c) or (d) of this regulation.

(f) The Board Staff shall also prepare a summary for Board hearing, which shall be a neutral statement of the relevant facts, the issues, and the positions of the department and the claimant. The summary for Board hearing shall not be written by any staff person or persons who reviewed the claim and determined it should be denied, or who participated in the preparation of the staff analysis and recommendation.

(g) The Chief, ~~of~~ Board Proceedings ~~Division~~ shall distribute the petition and related documents, the staff analysis and recommendation, the petitioner's response, if any, and the summary for Board hearing to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

(h) A reasonable extension of time for filing materials under (c) or (d) above may be granted by the Chief, ~~of~~ Board Proceedings ~~Division~~, upon a showing of reasonable cause. The request for an extension of time shall be submitted in writing before the scheduled due date of any materials.

(i) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, ~~of~~ Board Proceedings ~~Division~~ to the person submitting the documents.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 254.5 and 270, Revenue and Taxation Code.

ARTICLE 7. GENERAL BOARD HEARING PROCEDURES

5072. QUORUM.

Except as otherwise provided in this Chapter, any three members of the Board present at a meeting shall constitute a quorum. When a member is disqualified from participating in a decision under the provisions of the contribution disclosure statute (Government Code Section 15626), or the conflict of interest provisions of the Political Reform Act (Government Code Sections 81000, et seq.) the member may not be counted for a quorum. If a deputy of the State Controller is not authorized by Section 7.9 of the Government Code to participate because the matter before the Board is a Constitutional matter, the deputy of the State Controller may not be counted for a quorum.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; ~~and~~ Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, ~~7203~~, ~~7261~~, ~~7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5073. REPRESENTATION AT HEARINGS AND POWERS OF ATTORNEY.

(a) Taxpayers may be represented at all levels of review by any person of the taxpayer's choosing, including, but not limited to an attorney, accountant, bookkeeper, employee or business associate.

(b) Except as provided in ~~subsections~~~~subdivision~~ (c) below, the Board shall recognize all representatives who are identified in writing or orally by the taxpayer, and all those who advise the Board in writing that they represent the taxpayer. Recognized representatives shall be permitted to receive confidential information

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relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform with respect to the review of the matter.

(c) The Board, or Board Staff, may require a party to complete a Power of Attorney on a form provided by the Board. Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either Board of Equalization or Franchise Tax Board matters.

(d) The Power of Attorney form shall include the following information: taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address; the name, address, and telephone and FAX number of the appointed representative(s); the tax matters in which the representative is authorized to represent the taxpayer; the extent of the representative's authority; the tax period(s) for which the authorization is granted; a statement that the Power of Attorney revokes all prior Powers of Attorney with any exceptions to the revocation; the time period during which the Power of Attorney shall be in effect; the signature(s) and title of all affected taxpayers and the date of signature.

Note: Authority: Section 15606(a), Government Code; Section 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4), 7203, 7261, 7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5074. CONSOLIDATION FOR HEARING OR DECISION.

Upon the request of the Board or the Board Staff or any party, any matters pending before the Board may, at the discretion of the Board or the Board Staff, be consolidated for hearing or decision if the Board finds that the facts and issues are similar and no substantial right of any party will be prejudiced.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4), 7203, 7261, 7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5074.5. TIMELINESS OF DOCUMENTS.

A document shall be timely if it is mailed to or received at the headquarters office of the Board within the time specified by the particular statute or regulation under which the document is filed. In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in Article 7, Regulation 5070, shall be considered the mailing date. If the last day for mailing or delivering the document falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4), 7203, 7261, 7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

DRAFT SECTION 100 CHANGES TO THE RULES OF PRACTICE

5077. ALLOCATION OF HEARING TIME.

The Chief, of Board Proceedings ~~Division~~ shall allocate hearing time for each party, including response time, and reserve time for questions by the Board. Before the hearing, the Chief, of Board Proceedings ~~Division~~ shall inform the parties and the Board in writing of the allocations. At the hearing, the Chief, of Board Proceedings ~~Division~~ shall announce the hearing time allocations and inform the Board Chair when each of the allocations has elapsed.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4), 7203, 7261, 7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5078. SCOPE OF HEARING.

(a) An oral hearing shall be limited to consideration of the issues, values, or precise elements set forth in the petition, except that the Board may inquire into relevant new matters and afford the parties an opportunity to respond.

(b) Except in the case of appeals from actions of the Franchise Tax Board and hearings on publicly owned property, hearings before the Board under the applicable statutory provisions are not in the nature of trials or contests between adverse parties. They are meetings of the Board at which the taxpayer presents orally to the Board the taxpayer's arguments for a reduction or cancellation of a tax liability, a refund of tax previously paid, or a reduction in assessed value, or other relief.

Note: Authority Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4), 7203, 7262, 7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5080. BURDEN OF PROOF.

(a) Except as otherwise specifically provided by statute or in these regulations, the burden of proof shall ordinarily be upon the taxpayer as to all issues of fact.

(b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue shall be upon the Department.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202~~(d), 7202(h)(4), 7203, 7261, 7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

DRAFT SECTION 100 CHANGES TO THE RULES OF PRACTICE

5081. DECISION AND VOTING PROCEDURE: MAJORITY VOTE REQUIREMENT; VOTING.

(a) General. After the hearing, the Board may decide the matter, take it under consideration and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.

(b) Majority Vote Requirements. A majority vote of the quorum is required for all decisions or actions of the Board. If there is no objection by a Board Member, a matter may be decided by unanimous consent.

(c) Voting.

(1) To call for a vote, a motion setting forth the proposed decision or action of the Board shall be made by one Board Member and seconded by another. A motion calling for a vote on a matter noticed on the Board's agenda shall not be made until after the matter has been presented to, or, in the case of a closed session matter, discussed by, the Board at the meeting.

(2) Once the roll call for the vote has begun, the discussion of a motion shall end, the roll shall be called, and the motion shall be passed or defeated at that time unless one or more Board Members are absent and the voting Members are tied, in which case the Chairman may leave the roll open until the conclusion of the Board meeting in order to allow the absent Member or Members to be present and vote.

(3) Except as provided in subdivision (c) (2), in order to cast a vote, a Board Member, or, when authorized by statute, the deputy of the State Controller, shall be personally present at the time the roll for the vote is called.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), ~~7202(h)(4)~~, 7203, 7262, 7270, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

5082. FINALITY OF DECISION; PETITION FOR REHEARING.

(a) Except as provided in Regulation 5082.1 for appeals from actions of the Franchise Tax Board and in Regulation 5082.2 for Property Tax petitions, the decision is final 30 days from the date the official notice of Board action is mailed unless a petition for rehearing is filed pursuant to this regulation. If a petition for rehearing is timely filed, the decision is final either: (1) 30 days after the mailing of the official notice of Board action which that reflects the Board's denial of the petition for rehearing; or (2) if the Board grants a rehearing, 30 days after the mailing of the official notice of Board action which that reflects the Board's decision on the rehearing. Each party may file only one petition for rehearing.

(b) A petition for rehearing shall clearly state the legal and/or factual basis for the request. Reasons for requesting a rehearing include arguments that the Board made an error of law reaching its decision or that there is newly discovered evidence that was unavailable prior to the Board decision. Failure to state the legal and/or factual basis for a rehearing may result in denial of the petition for rehearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202(d), ~~7202(h)(4)~~, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6562, 6564, 7711, 7712, 8852, 8853, 12429, 12431, 30262, 30263, 32302, 32304, 38443, 38445, 40093, 40095, 41087, 41089, 43303, 43305, 45303, 45305, 46353, 46355, 50116, 50118, 55083, 55085 and 60352, Revenue and Taxation Code.

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5085. PUBLIC RECORD.

Public meeting agendas, minutes of public meetings of the Board including exhibits incorporated by reference, and documents distributed to Board Members for discussion or consideration at a public meeting are public records and open to public inspection unless exempted from disclosure by state or federal law. Documents exempted from disclosure include, but are not limited to, confidential taxpayer information, and memoranda from Board Legal Staff and the Attorney General to Board Members ~~which that~~ are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; ~~and~~ Sections 7051, 7202~~(d)~~, ~~7202(h)(4)~~, ~~7203~~, ~~7261~~, ~~7262~~, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 952 and 954, Evidence Code; ~~and~~ Sections 6252, ~~6253~~, 6254~~(b)~~, ~~6254(k)~~, 15619, and 15641, Government Code; Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381 and 60609, Revenue and Taxation Code.

5086. SUBPOENAS.

Subpoenas for the attendance of witnesses or the production of books, records, accounts and papers may be issued in accordance with Section 15613 of the Government Code. Except where the subpoena is issued at the request of the Board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance. An application for a subpoena for the production of books, records, accounts and papers shall be supported by an affidavit as prescribed by Section 1985 of the Code of Civil Procedure. Any affidavit filed in support of an application for a subpoena shall be served with the subpoena.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 15613, Government Code.